

WITNESS SECURITY AT COURT (Index)

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WITNESS SECURITY AT COURT

1. Introduction

What is the purpose of this guidance.

1.1 This is joint guidance produced by the Criminal Justice Group and the Department for Constitutional Affairs. Its main aims are to offer advice and examples of good practice to help improve the security arrangements for witnesses attending both magistrates' and the Crown Court. The guidance offers some recommendations and practical steps for implementation by the various criminal justice agencies involved in the court process, in particular Court Managers, relevant Police/CPS staff and their counterparts in Victim Support areas who are responsible for the Witness Service.

What evidence is this guidance based upon.

1.2 This guidance is based on visits to four Crown Courts and four magistrates' courts in a variety of locations. The areas were chosen to provide a cross-section of the different types of courts and arrangements that are currently available.

1.3 Various members of court staff were interviewed during these visits, including Court Managers, Facilities Managers and court security guards. Witness Service Managers were also interviewed. In addition, Court Managers throughout England and Wales were contacted and asked to provide examples of good practice within their respective areas. This guidance also draws upon *'Safe and Secure, Guidelines for effective security arrangements in Magistrates Courts'* (February 2004) produced by the DCA and stakeholders from within the magistrates' courts community and upon the *Magistrates' Court Service Inspectorate Report, 'A Thematic Review of the Management of Security in Magistrates' Courts'* (January 2002).

Why is security important

1.4 There is a duty of care on the criminal justice system (CJS) agencies to provide a safe environment for the public, staff and volunteers who are users of the court system. Section 76 of the Criminal Justice Act 1991 made Magistrates' Courts Committees (MCCs) responsible for the security provisions in magistrates' courts. It is one of the Government's priorities to try to ensure that victims and witnesses who attend court are not intimidated while going through the court process. Providing better security at court is directly related to two of the CJS Public Service Agreement (PSA) targets, to bring more offences to justice and to improve public confidence in the criminal justice system.

1.5 Attending court can be a very difficult experience for many victims and witnesses. On an average day in any magistrates' or Crown Court there may be a number of potentially violent or (at the very least) difficult persons located in, or in close proximity to, a court building.

1.6 Over recent years, a number of improvements have been made to provide additional security to witnesses attending court. Witness waiting rooms and live TV link rooms to help vulnerable and intimidated witnesses (VIW) give evidence are helping to increase witness confidence. The establishment of the Witness Service in all Crown and magistrates' courts is also a major factor in enhancing witness security, as the Service

often acts as the focal point for all of the CJS agencies to help witnesses and reduce levels of fear and intimidation.

1.7 This guidance sets out some examples of good practice and makes recommendations on what can be done to create a more secure environment for witnesses in court. Section 2 suggests what action can be taken in the run-up to the trial. Sections 3 and 4 focus on how to improve the experience for witnesses in the court building itself. Section 5 covers defence witnesses.

2. Pre-court action to help mitigate intimidation in court

Witness Intimidation – reporting the offence

Recommendation 1 – Reporting witness intimidation

Witnesses should be encouraged to report all forms of witness intimidation, including intimidation in the court building, to the police. Police should always record these incidents and investigate them accordingly. The court administration and the police should liaise and produce a local protocol on reporting witness intimidation at court.

2.1 Witness intimidation can occur at any time after the reporting of an incident. This can be in the run-up to a trial as well as in the court building itself. The police have a duty to record any report of intimidation, which falls within s.51 of the Criminal Justice and Public Order Act 1995 or s.39 of the Criminal Justice and Police Act 2001. All witnesses in both criminal and civil cases - whether they appear for prosecution or defence, plaintiff or defendant - are therefore covered. Both provisions allow reporting of intimidation to take place at any time up to one year after the conclusion of the proceedings.

2.2 When considering a report by a member of the public of any criminal offence, including intimidation, the decision whether or not to carry out further investigation will depend on a number of factors, including whether sufficient evidence has been obtained from the person reporting. This decision is a matter for the police.

Identification of witness needs

Recommendation 2 – Identifying witness needs/referrals to Witness Service

The police/CPS/defence should identify witness needs (including the need for special measures) and refer witnesses to the Witness Service and apply for special measures as early as possible. The Witness Service should encourage strong communication links with CJS agencies who refer

2.3 In 2002/03 the Witness Service (run by Victim Support) found that only half of vulnerable or intimidated witnesses¹ (VIWs) who attended court were identified by CJS agencies and given additional support before a trial (17,000 out of 34,000).

2.4 CJS agencies in many areas are concentrating their efforts on improving victim and witness care, particularly during the run-up to a trial. Under the 'No Witness No Justice' project, dedicated Witness Care Units - jointly staffed by the police and CPS - will be set up in all 42 Local Criminal Justice Board areas by December 2005, and every area should have at least one unit by April 2005. These units are likely to play an increasingly important role in preventing witness intimidation at court. They should help improve the experience of the witness in court through their early assessment of the needs of individual witnesses. These should include the possible need for special measures under the Youth Justice and Criminal Evidence Act 1999 to assist VIWs to give evidence in court. They should make more, earlier and better-informed referrals to the Witness Service. The roll-out of the statutory charging scheme should also help to ensure earlier identification of witness needs, as a result of the presence of lawyers in police stations at the point of charge.

Referrals to the Witness Service

2.5 The Witness Service have staff and volunteers located in all magistrates' and Crown Courts. Their involvement is essential to providing a more secure environment for witnesses attending court. They can offer pre-court familiarisation visits, and on the day they can greet witnesses, arrange for them to wait in a safe and secure area (where the court building allows) and provide general advice about court procedures, but not discuss the evidence that witnesses will give. Close communications and working relationships between the CJS agencies and the Witness Service are crucial to effective witness care.

Example of Good Practice 1 – Closer working relationships

The Witness Service in one area hosted visits by Criminal Justice Unit (CJU) staff where both could describe their respective roles and how they could help one another. Also, Witness Service staff ran training sessions with CJU staff about the role of the Witness Service.

2.6 In many areas, referrals are made to the Witness Service at an early stage in both the investigative and trial process - particularly in child protection and domestic violence trials, where the investigating officers often engage the help of the Witness Service. Furthermore, in many areas the Witness Service is pro-active in terms of seeking referrals. They will often make several enquiries to determine whether or not a witness requires

¹ An intimidated witness is defined as someone whose evidence is likely to be diminished by reason of fear of distress (section 17 of the Youth and Criminal Evidence Act 1999)

additional support, through reviewing the List of Witnesses to Attend Court (LWAC) and sending letters to witnesses who may require their services.

Example of Good Practice 2 – Witness Service referrals

In one of the trial areas for No Witness No Justice, the Witness Service receives in advance a pro forma summary of each case involving vulnerable and intimidated witnesses from the CPS Trials Unit. This provides details of indictment(s) together with a short summary of the facts and any special witness needs.

2.7 Whatever local arrangements the CJS agencies have in place to support witnesses in the run-up to the trial, it is important that police and CPS staff responsible for victim and witness care should identify at an early stage any particular needs that are required for the attendance of a witness at court. They should also consider whether to apply to the court for special measures. It is then essential that the relevant witness liaison officers relay this information to the Witness Service and court at the earliest possible opportunity.

3. Action in the court building

Separate entrances and alternative entry points

Recommendation 3 – alternative entry and exit points

In particularly sensitive cases the court and the Witness Service should review alternative entry and exit routes, to limit the opportunities for the witness and defendant to meet.

3.1 At the time of collating this information, 62 courthouses throughout the country had separate entrances for prosecution witnesses. This means that the vast majority of courts do not have separate entrances. However in all of the areas visited, in certain VIW cases arrangements had been made to prevent prosecution witnesses and defendants from entering or leaving the court building via the same entry and exit points. This included Witness Service staff meeting police officers and prosecution witnesses outside the court building and escorting the witnesses through an alternative entrance.

3.2 Some of the court staff interviewed said that they preferred an entry system where there was only one main entrance, but where alternative arrangements could be made for particular VIWs. This meant that they could concentrate security in one particular area, as opposed to having less effective security spread around the building. Also, they said that by using the same entrance witnesses and jurors would be less conspicuous and therefore less readily identifiable.

Front entrance

Recommendation 4 – Front entrance security

All court security guards should be aware of the policy on entry to the court buildings and the requirement to conduct searches in accordance with accepted guidelines.

3.3 All of the courts visited had some form of front entrance security. Security arches and hand-held metal detectors were the most evident and were generally monitored by court security guards. However, there was a considerable variation in the number of guards employed at each entrance and the vigilance they displayed. It is a requirement that every person entering a court is searched upon entry, although in practice this does not always happen. At the current time, section 77(1)(a) of the Criminal Justice Act 1991 provides that a security officer acting in the execution of his duty shall search any person who is entering or seeking to enter a magistrates' court. It is Court Service policy that the same approach be adopted in all Crown Courts, although this is not a statutory requirement until s. 52 of the Courts Act 2003 is implemented.

A uniformed presence in court buildings

Recommendation 5 – Joint protocols

The courts administration and the police should draw up joint protocols on the respective roles of court security guards and the police in dealing with incidents

3.4 The extent of police involvement within the court building can vary greatly. For instance one of the largest Crown Court centres in the country has recently returned to having one sergeant and four constables permanently located within the court, whereas other courts have no permanent police presence. One of the Crown Court centres visited had a permanent police officer stationed within the court. In this court it was the police officer rather than security guards who dealt with the majority of threatening and violent incidents. This contrasted with another Crown Court which had no permanent police presence, but where the court security guards adopted a more pro-active role in escorting witnesses and dealing with difficult incidents. The decision to locate police officers in court buildings permanently is one for Chief Constables to make, but judges universally take the view that police presence in court is the greatest assistance to the administration of justice in the protection of witnesses.

3.5 It is likely that at any time of day there will be a police presence in the court, as police officers are often waiting to give evidence. In June 2002 the then Senior Presiding Judge sent a letter to Chief Constables asking them to direct uniformed police staff to wear their operational uniform at court. In addition this letter also asked that officers attending court should be visible and should wait in the main waiting areas rather than in the police waiting rooms out of sight of the public. This also included non-uniformed officers, with the exception of undercover staff. The aim of this request was to help provide additional public reassurance, and visible support to court security guards, without the need to remove police officers from their front line duties.

The role of Court Security Officers (the Courts Act 2003)

3.6 It is not suggested that the police should be solely responsible for dealing with these type of incidents. The Criminal Justice Act 1991 places a responsibility on magistrates' courts to manage the security in their courts and provides a statutory backing for the role of court security guards. Up until now, there has been no statutory backing for the role of court security guards in Crown Courts. The provisions contained in Part Four of the Courts Act 2003 will develop the role of the court security guard in courts, thus enabling a uniform approach across the courts. Guards will be formally appointed as Court Security Officers by the Lord Chancellor and once designated will have the power of search, the power to exclude, remove or restrain, the power to surrender and seize articles and the power to retain articles surrendered or seized. It is anticipated that the provisions

will be implemented within the Court Service estate later this year. Following the launch of Her Majesty's Courts Service on 1 April 2005, it is hoped that these provisions will be rolled out in magistrates' courts. Once implemented, the role of Court Security Officers and their contribution to the protection of witnesses will be strengthened.

Escorting Witnesses

Recommendation 6 – escorting witnesses

The Witness Service or other court staff should continue to escort vulnerable and intimidated witnesses and consider the practice of providing volunteers with hand-held panic alarms, which could be used by witnesses or volunteers in particularly sensitive cases.

3.7 Witness Service volunteers often escort witnesses to the courtroom, to video link rooms, and remain with witnesses in the witness waiting rooms. Arrangements are sometimes made by the Witness Service to meet witnesses outside the court building and to escort them inside to a secure and safe waiting area. In one of the courts visited, a plain and fairly intimidating corridor - which was regularly used by the Witness Service to escort child witnesses - had been decorated with colourful murals.

3.8 Witness Service staff and volunteers can also feel vulnerable and intimidated. The Witness Service could review the practice adopted in some areas where Witness Service volunteers and witnesses were provided with small hand-held panic alarms, which could alert court security guards or even police officers of any difficulties which they might be experiencing. Witness Service staff and volunteers should feel encouraged to report any concerns regarding witness intimidation to court security guards or to the police.

Location of waiting rooms

Recommendation 7 – consultation on location of witness rooms

Court staff are encouraged to seek the views of the Witness Service when deciding on the location of witness waiting rooms and live link rooms, and the security of witnesses should also be taken into account in designing new court buildings.

3.9 The location of the waiting room is a key element in helping to establish a secure environment for witnesses. In some of the courts visited, witnesses would often have to 'run the gauntlet' of passing through areas where defendants and other court users were waiting. There were examples of witness waiting rooms or video link rooms being located next to probation offices or other unsuitable areas, which were regularly used by defendants. In one of the magistrates' courts visited the previous witness waiting room was described as a 'goldfish bowl', located in a glass-walled area in the main foyer allowing defendants and other court users to view witnesses and intimidate them while they were waiting to give evidence. To a certain extent screening the witness room off, a relatively inexpensive and efficient method of reducing intimidation, had rectified this. However, the waiting room was still located in the middle of the main foyer area, where defendants and other court users tended to congregate.

3.10 While the physical structure of most court buildings imposes constraints on the kind of accommodation which can be provided for witnesses, courts are encouraged to review, wherever possible, their facilities to ensure that the best possible location has been identified for witness waiting rooms and live link rooms. Decisions about the location of witness waiting rooms and other facilities can be enhanced by consulting the Witness Service, as was the case in the good practice example below.

Example of Good Practice 3 – location of witness waiting rooms

In one court visited, a witness waiting room was located away from the main waiting area and near to Police and Major Investigation Team rooms. It was also planned that a new video link room would be installed adjacent to the waiting room. The waiting room had separate toilet and refreshment facilities.

Live links outside court

Recommendation 8 – live link rooms outside of the court building

All CJS agencies should consider, where it has been decided that a vulnerable or intimidated witness is to give evidence by a live link, whether their evidence can be given from a remote location. It should not be assumed that all witnesses want to use the link, and their wishes should be taken into account, including the use of screens. location

3.11 Where special measures apply² allowing VIWs to give their evidence via a TV link, where resources permit, it is worth considering locating a live link room outside the court building to avoid the need for the witness to attend court at all.

Example of Good Practice 4 – location of live link rooms

In one area, live TV links to the courtroom have been set up outside of the court building in an NSPCC suite.

4 Court Personnel

Security Culture

Recommendation 9 – Security strategy

Courts should consider adopting a proactive security strategy to prevent intimidation and anti-social behaviour, in particular in identified problem areas in the court building.

² At the time of writing, in the magistrates' courts the provision to allow evidence to be given by live link (s 24 of the Youth Justice and Criminal Evidence Act 1999) is only available in respect of vulnerable witnesses. It is planned to extend the provision to intimidated witnesses in the magistrates' courts from April 2005, once sufficient facilities are in place.

4.1 The front entrance and foyer areas of courts are where most people tend to congregate, and these are the areas where the majority of threatening or violent incidents are likely to take place and where intimidation is most prevalent. In some of the Crown Courts visited, efforts had been made to adopt a security culture within the main waiting areas and entry points. Court security guards adopted a pro-active approach in dealing with difficult court users using the court as a recreational area. Implementing a security culture, as outlined in the Example of Good Practice below, should help reduce the levels of fear and intimidation experienced by witnesses.

Example of Good Practice 5 – Security Culture

A security culture was introduced by the NHS with their 'Zero Tolerance Zone' (October 1999) initiative. This was introduced to help NHS managers to reduce the risk of violent incidents to their frontline staff. The Benefits Agency adopted a similar approach of reclaiming public areas, which they felt had got out of hand and had become social meeting centres. They emphasised the need to deal with users quickly and efficiently and that once users had completed the purpose of their visit they were required to leave. In addition they encouraged all of their staff to take a proactive response in dealing with disorderly behaviour and re-designed many of their buildings to include an enhanced security element.

Court Security Managers

Recommendation 10 – Security Managers

Courts should review who is the most appropriate person to have responsibility for court security and to consider the need for a Security Manager to be appointed.

4.2 In many courts, overall responsibility for court security is an additional responsibility of the facilities and administration managers. Some of the courts visited employed a dedicated supervisory court security guard, which allows for more effective supervision of the work undertaken by the guards and raises the general level of awareness of security issues.

4.3 At present there is no uniform approach to appointing either a Court Security Manager or a supervisory court security guard in either magistrates' or Crown Courts. For Crown Courts, each Circuit area has a circuit security officer, although this is not a stand-alone role and is often an additional function to an existing post. At a more local level, local security officers are employed, but once again this is normally an additional responsibility given to an existing member of staff (usually the accommodation liaison officer). In magistrates' courts, *the Thematic Review of the Management of Security in Magistrates' Courts* produced by the Magistrates' Courts Service Inspectorate in January 2002 recommended that consideration should be given to the appointment of a designated Security Manager for each Magistrates' Courts Committee area. A sample job description for this role has been included in *Safe and Secure: Guidelines for effective security arrangement in Magistrates' Courts* produced in February 2004.

5. Defence Witnesses

Recommendation 11 – defence witnesses

Courts should take into account the needs of defence witnesses and review whether a separate waiting room can be provided. Defence solicitors should be encouraged to make greater use of the Witness Service.

5.1 The above considerations of witness security apply equally to defence witnesses, as they are as important to effective trials and justice as prosecution witnesses. At the time of collating this information 92% of Crown Courts had separate waiting rooms for prosecution witnesses and only 53% for defence witnesses. In magistrates' courts most had separate prosecution witness waiting rooms but only 43% had separate defence witness waiting rooms.

5.2 The Witness Service offer the same services to defence witnesses which they provide to prosecution witnesses, but report that there is generally a very small take up by defence solicitors or witnesses. Victim Support and the Witness Service are working to raise awareness of their services locally, regionally and nationally. However, in order to improve the current rate of referral, further work is needed to publicise that the services and facilities provided by the Witness Service apply equally to defence witnesses.